

MISC. CIVIL APPLICATION NO. 1867 OF 1993.

Date of decision: 6.9.1996.

For approval and signature

The Honourable Mr. Justice S.M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. Kiran Yagnik, advocate for petitioner.

Mr. J.T. Trivedi, advocate for respondent No.1.

Respondent No.2 -served.

Mr. F.Y. Mehta, A.G.P. for respondent No.3.

1. Whether Reporters of Local Papers may be allowed to see the judgment?No
2. To be referred to the Reporter or not?No
3. Whether their Lordships wish to see the fair copy of judgment?No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?No
5. Whether it is to be circulated to the Civil Judge?No

Coram: S.M. Soni & R. R. Jain, JJ.

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September 6, 1996.

Oral judgment (Per Soni, J.)

Petitioner has filed this application for taking action against the respondents under the Contempt of Courts Act alleging wilful disobedience of the order passed by the Gujarat Affiliated Colleges Service Tribunal on 24.12.1992 in Application No. 79 of 1992. The Tribunal has passed the following order:

"Under the above circumstances, the application is disposed of by passing the following order. The applicant is declared as entitled to the remaining 50% of the wages for the period between 1.8.1980 and 31.10.1991. The opponent college is directed to pay the same. It is recommended to the department that in view of the facts and circumstances and in view of the regularisation of the period of suspension of the applicant, the supplementary bill for the remaining 50% of the salaries for the period of the suspension be sanctioned as per rule."

Respondent No.1 has filed affidavit on behalf of respondents No.1 and 2 wherein he has specifically stated that they have been bona fide pursuing the matter with the Government. They have also emphasized on the statement made in the settlement that the petitioner shall not go to court of law for any monetary claim as against the respondent No.1. To quote the relevant part of the agreement which is in Gujarati, a free hand translation is given as under:

"....Further, in future, I will not institute any court proceedings against the management in respect of this subject matter nor I will make any claim. This I hereby assure and, therefore, request to take necessary decision in the matter....."

According to the petitioner he was entitled to 50% of the balance of suspension allowance and, therefore, he has approached the Tribunal and the Tribunal passed the above quoted order. According to respondent No.2, despite their repeated representations to the Government, the bills submitted by them for the balance 50% has not been passed.

On behalf of the Government one Mr. D.A. Jani, Accounts Officer has filed affidavit in reply wherein it is stated that the said claim being not in accordance with law, could not be allowed. In the affidavit, it is stated as under:

".....However, as the Hon'ble Tribunal had directed the Government to decide either positively or negatively the question of admissibility of grant of 50% of salaries for the suspension period, the Joint Director, Commissioner of Higher Education, taking into account the bills submitted by the opponent

college, decided on 26.5.1994 that the said bill  
for 50% of the salaries is not admissible as per  
the rules for the purpose of grant. xxxxxxxxxxxx  
xxxxx xxxxxx xxxxxxx xxxxx xxxx xxxxxx xxxxxx xxxxxx  
xxxx xxxx xxxx xxxx xxx xxx xxxxxx xxxx xxxx xxxx  
Thus it is obvious that no financial liability  
can be imposed upon the Government for the said  
suspension period which was put to an end by an  
agreement between the applicant and the opponent  
college."

Thus, it is clear that the management has not paid the  
amount because they were under the impression that the  
same is to be paid by the Government and what was  
required on their part was to submit the bill which has  
been done by them. The Government did not pay the same  
saying that it is not permissible under the rules of  
grant. Thus, in our opinion, it cannot be said that  
there is any wilful disobedience of the order by either  
of the respondents.

Apart from this, in our judgment in the case of Girish  
Chandra Bhatt, 1996 (1) GLH 523, we have held the award  
passed by the Tribunal is executable. Contempt is not a  
substitute to execution as held by the Supreme Court in  
the case of the Alahar Cooperative Credit Service Society  
v. Sham Lal, 1995 (2) GLH 550. Thus, the petition is  
not maintainable and is hereby dismissed. Rule is  
discharged. No order as to costs.